

REVISED

MEMORANDUM

April 12, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: ELIZABETH M. CORTEZ  
Assistant County Counsel  
Government Services Division

RE: Indra Systems, Inc. v. County of Los Angeles  
Los Angeles County Superior Court Case No. BC 323293

DATE OF  
INCIDENT: July 10, 2003

AUTHORITY  
REQUESTED: \$237,500

COUNTY  
DEPARTMENT: Registrar-Recorder/County Clerk and Internal Services Department

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CLAIMS BOARD ACTION:



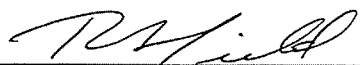
Approve

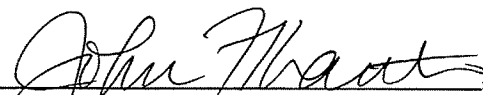


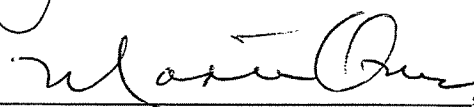
Disapprove



Recommend to Board of  
Supervisors for Approval

  
\_\_\_\_\_, Chief Administrative Office  
**ROCKY A. ARMFIELD**

  
\_\_\_\_\_, County Counsel  
**JOHN F. KRATTLI**

  
\_\_\_\_\_, Auditor-Controller  
**MARIA M. OMS**

on May 1, 2006

## SUMMARY

This is a recommendation to settle for \$237,500, the lawsuit filed by Indra Systems, Inc. ("Indra") for breach of contract arising from the issuance of a Purchase Order ("PO") by the Internal Services Department ("ISD") for electronic poll books ("EPBs") to be used by the Registrar-Recorder/County Clerk ("Registrar").

## LEGAL PRINCIPLES

A public entity is responsible for breach of contract damages when an enforceable contract exists, and the public entity refuses delivery of the goods. When a breach of contract has occurred, the aggrieved party should be put in as good a position as if the party had fully performed, except that a seller still in possession of goods must make attempts to mitigate its damages by reselling or leasing the goods.

## SUMMARY OF FACTS

On July 10, 2003, a PO was issued by ISD's Purchasing Division for EPBs to be used on a test basis in future elections by the Registrar. The facts surrounding the issuance of the PO and ultimate rejection of the goods by the Registrar are as follows:

- A PO was issued on July 10, 2003, based on information in the possession of ISD as of June 30, 2003, i.e. the close of the fiscal year. The PO stated a purchase price of \$3,223.07 for the economy model, and \$4,293.47 for the robust model.
- ISD and the Registrar negotiated and finalized further price reductions with Indra, and Indra submitted their reduced price offering in writing to ISD after the close of the fiscal year. Indra offered a reduced price of \$1,998 for the economy model and \$1,988 for the robust model, which the Registrar accepted.
- ISD created and issued an amended PO reflecting the price reduction that had been negotiated on August 11, 2003. However, the amended PO had an incorrect mailing address for Indra as Vienna, CA, rather than Vienna, VA. ISD cannot confirm that the amended PO was mailed or whether the amended PO

actually reached Indra. Indra claims it never received the amended PO containing the price reductions.

- The Registrar was under the mistaken impression that the PO was solely being issued to encumber funds in the event that at some future date the Registrar decided to use the EPBs on a pilot basis. The Registrar's staff inserted language into the PO which they thought gave them the ability to decide at a later time whether to purchase any EPBs at all. This language conflicted with the other terms of the PO which indicated that an initial order of 230 units was to be purchased and any remaining quantities would be purchased at a later time at the sole discretion of the Registrar.

- On August 8, 2003, Indra communicated via email with the Registrar's project manager and other staff indicating that they acknowledged that they had been awarded the contract as indicated on the County's website, and that they had some questions but were otherwise ready to produce the products. For reasons beyond the Registrar's control, such as the unexpected special election to recall the Governor, this email went unanswered until October 16, 2003. By that time, Indra had already produced the EPBs, and were preparing for shipment.

- On November 10, 2003, Indra sent an email to the Registrar's project manager indicating that the EPBs were fully loaded with software and ready to ship. There were also many unanswered telephone calls between August and October by Indra attempting to confirm a delivery date.

- On February 17, 2004, Indra attempted delivery of the EPBs which were refused by the Registrar.

## DAMAGES

Should this matter proceed to trial, we estimate the potential damages could be as follows:

Contract Damages:	\$773,418
Interest:	\$177,953
Total	<u>\$951,371</u>

The settlement calls for the County to pay Indra \$237,500 for all of its claims and costs. The case will be dismissed with prejudice with both sides bearing their own attorney's fees.

## STATUS OF CASE

The lawsuit was filed on October 21, 2004. The matter was scheduled for trial on April 26, 2006. The Court ordered the parties attend a mandatory settlement conference on April 15, 2005. The plaintiffs offered to settle the case for \$500,000, which the County refused. Further discussions appeared fruitless, ending the settlement conference. After a considerable amount of discovery, the parties agreed to attend private mediation. In January, plaintiffs made what they characterized as a final offer of \$350,000, and refused to attend the mediation. Upon motion by defense counsel, the Court ordered the parties to attend a settlement conference with Judge Owen Kwong in Department 98 on March 1, 2006. This proposed settlement was reached during the settlement conference with Judge Kwong.

In light of the proposed settlement, the Court has vacated the trial previously scheduled for April 26, 2006.

The County has incurred approximately \$75,000 for defense attorney's fees and \$11,000 in other costs.

## EVALUATION

Discovery in this case has been aggressively conducted and defended by the plaintiffs. Numerous depositions have been noticed by plaintiffs, however, the County was able to postpone the depositions in hope of reaching a settlement. At trial, Indra would argue with the support of the law that the PO was a contract and bound the County to purchase the EPBs.

Indra will further argue that the initial PO at the higher price was the final memorialization of the contract. The Uniform Commercial Code provides that evidence of a prior or contemporaneous agreement is not admissible to contradict terms set in writing. As such, it is unclear whether discussions regarding the price negotiations would be admitted by the Court.

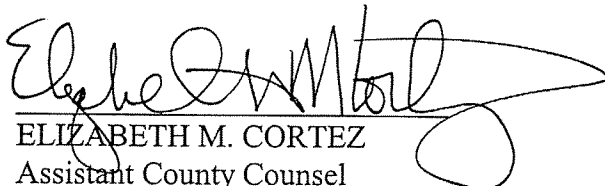
Defense counsel was able to gather evidence that Indra had leased the EPBs to mitigate its damages. As such, the EPBs are now in a used condition. The County was able to use this information in the settlement conference to reduce the damages incurred by Indra. However, at trial, Indra will argue that the

projects in which the EPBs were leased were pilot projects which did not result in any net profit to Indra after all expenses of the pilot projects are calculated.

A reasonable settlement at this time will avoid the potential that a jury trial on the issue of breach of contract could result in a verdict that substantially exceeds the proposed settlement.

We join with our private counsel, Tharpe & Howell, in recommending a settlement of this matter in the amount of \$237,500. The Registrar-Recorder/County Clerk and Internal Services Department concur in this settlement recommendation. The settlement payment will be allocated 75% from the Registrar-Recorder/County Clerk, and 25% from ISD.

APPROVED:

  
ELIZABETH M. CORTEZ  
Assistant County Counsel  
Government Services Division

EMC: JW:ds